

ARTICLE XV
BOARD OF ZONING APPEALS

15.1 - CREATION AND APPOINTMENTS

- 15.1.1 A Board of Zoning Appeals is hereby established in accordance with Section 13-207 of the Tennessee Code Annotated. The Board of Zoning Appeals shall consist of five (5) members, who may be members of the Johnson City Regional Planning Commission, and shall be appointed by the Chief Executive, and confirmed by a majority vote of the Board of Commissioners. The term of membership shall be three (3) years. Vacancies shall be filled for any unexpired term by appointment by the Chief Executive and confirmed by the Board of City Commissioners.

15.2 - PROCEDURE

- 15.2.1 Meetings of the Board of Zoning Appeals shall be held at the call of the chairman, and at such other times as the Board may determine. The chairman or, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall adopt rules of procedure and shall keep records or applications and action thereon, which shall be a public record.

15.3 - APPEALS: HOW TAKEN

- 15.3.1 An appeal to the Board of Zoning Appeals may be taken by any person, firm or corporation aggrieved, or by any governmental officer, department, board, or bureau affected by any decision of the Chief Building Official based in whole or in part upon the provisions of this Code. An appeal must be made to the Board of Zoning Appeals within 30 days of the date of the decision of the Chief Building Official. The Chief Building Official shall send written notice of the decision to the aggrieved party on the date the Chief Building Official renders a decision, specifying the grounds, thereof. The Chief Building Official shall transmit to the Board all papers constituting the record upon which the action appealed was taken. The Board shall fix a reasonable time for the hearing of appeal, give public notice thereof, at least five (5) days but not more than fifteen (15) days prior to the date of the meeting, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any person or party may appear in person or by agent or by attorney.
- 15.3.2 To insure that all interested parties will be notified in the case of variances and special exception, the applicant shall prepare and submit with his application, in stamped unsealed envelopes, to be mailed by the Chief Building Official's office letters of notification to each resident and property owner within two hundred (200) feet of the property for which variance or special exception is sought.

- 15.3.3 When a request has been made for a variance or special exception, a sign shall be posted on the property to be considered. Said sign shall comply with the following.
- A. The following information shall be on the notification sign: the reason (variance or special exception), time, and location of the meeting.
 - B. Be posted fifteen (15) days prior to the public hearing date given on the sign.
 - C. Be placed to face the public street right-of-way on which the property fronts and be within twenty-five (25) feet from said right-of-way with letters which measure at least two (2) inches in height.
- 15.3.4 To partially defray administration cost and cost of giving public notice, the applicant shall pay a filing fee to the city of Johnson City.

15.4 - POWERS

The Board of Zoning Appeals shall have the following powers:

- 15.4.1 **ADMINISTRATIVE REVIEW:** To hear and decide appeals where it is alleged by the appellant that there is error in any order requirement, permit, decision, determination or refusal made by the Chief Building Official or other administrative official in the carrying out or enforcement of any provision of this Code. Applications for Administrative Review shall be made to the Board of Zoning Appeals within thirty (30) days of the date of the decisions of the Chief Building Official. The Chief Building Official shall send written notice of the decision to the aggrieved party on the date the Chief Building Official renders a decision, specifying the grounds, thereof.
- 15.4.2 **SPECIAL EXCEPTIONS:** To hear and decide, in accordance with the provisions of this Code, requests for special exceptions, and for decisions on other special questions upon which the Board of Zoning Appeals is authorized to pass by this Code. Any special exception shall be subject to such conditions as the Board may require to preserve and promote the character of the district in which the use is located and otherwise promote the purpose of this Code. Only those special exceptions listed in Article VI as Uses Permitted By Approval As Special Exceptions may be acted upon by the Board; and the Board must observe any conditions imposed by this Code regarding any special exception use permitted.
- 15.4.3 **VARIANCE:** To hear and decide applications for variance from the terms of this Code, but only where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, which at the time of the adoption of this Code, was a lot of record; or where, by reason of exceptional topographic conditions or other extraordinary or exceptional situation or condition of a piece of property, the strict application of the provisions of this Code would result in practical difficulties to or undue hardship upon the owner of such property, provided that such relief may be granted without substantial detriment to the public good and without substantially

impairing the intent and purpose of this Code. In granting a variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purposes of this Code.

- 15.4.3.1 Variances shall be granted only where special circumstances or conditions (such as exceptional narrowness, topography, or siting) fully described in the findings of the Board, do not apply generally in the district.
 - 15.4.3.2 Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested; nor shall a variance be granted which will alter the density standards established by this Code.
 - 15.4.3.3 For reasons fully set forth in the findings of the Board, the aforesaid circumstances or conditions are such that the strict application of the provisions of this Code would deprive the applicant of any reasonable use of his land. Mere loss in value shall not justify a variance; there must be a deprivation of beneficial use of land.
 - 15.4.3.4 Any variance granted under the provisions of this Section shall be the minimum adjustment necessary for the reasonable use of the land.
 - 15.4.3.5 The granting of any variance is in harmony with the general purposes and intent of this Code and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the comprehensive plan for development.
 - 15.4.3.6 The Board of Zoning Appeals shall have no authority to consider a variance which would reduce the number of trees or the total area of landscaping required under Article VI or Article XII of this Code.
- 15.4.4 **VARIANCE: (EXCLUSIVELY IN REGARDS TO ARTICLE VIII, FLOODPLAIN REGULATIONS)**
- Conditions for Variances: Variances shall be issued upon a determination that the variance is the minimum relief necessary, considering the flood hazard; and in the instance of a historical building, a determination that the variance is the minimum relief necessary not to destroy the historic character or design of the building. Variances shall be issued only upon: a showing of good and sufficient cause; a determination that failure to grant the variance would result in exceptional hardship; and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances. Any applicant to whom a variance is granted shall be given written notice by the Chief Building Official that the issuance of a variance to construct a structure below the base flood level may result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property. The Chief Building Official shall maintain the records of

all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

15.4.4.1 In passing upon such applications the Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of the Floodplain Regulations, the Zoning Code's general requirements for variances, and:

- A. The danger that materials may be swept onto other property to the injury of others;
- B. The danger to life and property due to flooding or erosion;
- C. The susceptibility of the proposed facility and its contents to flood damage;
- D. The importance of the services provided by the proposed facility to the community;
- E. The necessity of the facility to a waterfront location, in the case of a functionally dependent facility;
- F. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- G. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
- H. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- I. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- J. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets such as bridges.

15.4.4.2 The Board of Zoning Appeals shall have no authority to consider variances within any designated floodway or sinkhole "no-build" line, if any increase in flood levels during the base flood discharge would result.

15.4.4.3 Exclusively in regards to Article VIII, Floodplain Regulations, the Board of Zoning Appeals shall have authority to consider variances for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's

continued designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure.

- 15.4.4.4 Upon consideration of the factors listed above, and the purposes of this Ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to effectuate the purposes of this Ordinance.

RULES OF PROCEDURE

BOARD OF ZONING APPEALS

Article I

Officers

- Sec. 1 The Board shall organize and elect a Chairman and Vice-Chairman annually in the month of January.
- Sec. 2 The Chairman shall preside at all meetings and hearings of the Board and have the duties normally conferred by parliamentary procedure on such officers. He shall have the privilege of discussing all matters before the Board and to vote thereon. The Vice-Chairman shall assume the duties of the Chairman in his absence. In the event of the absence of both the Chairman and the Vice-Chairman, the members may elect a temporary Chairman for that meeting and proceed with the order of business.
- Sec. 3 The secretary of the Board, who shall be the City Manager or his designee(s), shall conduct all official correspondence and keep the minutes and records of the Board, give adequate notice to all property owners within two hundred (200) feet of any variance or special exception request, and keep a file on each request which comes before the Board, and attend to such other duties as are normally the function of a secretary.
- Sec. 4 Nomination of officers shall be made from the floor. The nominees for each office receiving a majority vote of the membership of the Board present and voting shall be declared elected. All officers shall be elected for a term of one (1) year and shall serve until their successors are elected and shall be eligible to succeed themselves. Vacancies on the Board should be filled at the next regular meeting by the Board of Commissioners after the vacancy occurs for the unexpired term by regular election procedures.

Article II

Meetings

- Sec. 1 Meetings of the Board of Zoning appeals shall be held on the second Tuesday of each month at 9:00 AM in the Commission Chambers of the Municipal and Safety Building, unless no cases are pending, in which case no meeting shall be held. Meetings may be canceled by the Chairman for good cause.
- Sec. 2 Special meetings may be called by the Chairman, and at such other times as the Board may determine. It shall be the duty of the Chairman to call a meeting when requested to do so in writing by two members of the Board.
- Sec. 3 The secretary shall provide adequate notice to all members of the Board in advance of a special meeting. Adequate public notice shall also be given prior to the date of the meeting.

- Sec. 4 The Chairman, or in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses.
- Sec. 5 All meetings of the Board shall be open to the public.
- Sec. 6 A majority of the Board, three (3) members, shall constitute a quorum. A quorum shall be present before any business is transacted.
- Sec. 7 All actions and recommendations of the Board shall be approved by a majority of those present and voting.
- Sec. 8 When a member of the Board has a conflict of interest in a matter brought before the Board, it is customary that he or she declare that conflict of interest prior to considering whether to vote upon the matter.
- Sec. 9 A record of the vote of each member on each question shall be kept as a part of the minutes.
- Sec. 10 The order of business at all regular meetings of the Board shall be as follows: (a) call to order, (b) approval of minutes of previous meeting or meetings, (c) reports of officers or committees, (d) old business, (e) new business, and (f) adjournment.
- Sec. 11 At the time of the meeting the applicant may appear in his own behalf or be represented by counsel or agent. Failure of the applicant, counsel, or agent to appear may result in the case being continued or such other action as the Board deems appropriate.
- Sec. 12 On each item, the staff's recommendation shall be made first, followed by the applicant's statement, and the statement of any private citizen for or against the proposal.

Article III

Member Attendance

In order for the Board to carry out its duties and responsibilities, it is necessary for all members to attend the Board's meetings. When any member has been absent for three (3) consecutive meetings, the secretary shall notify such member in writing of such absences, and if such member fails to attend the next regular meeting following such notification, the Board may take such action as it deems proper.

Article IV

Applications

- Sec. 1 Applications to the Board of Zoning Appeals may be made by any person affected by any decision of the zoning administrator, by applicants for a special exception, or by applicants for a variance. All Applications must be signed by a vested party, either the owner or someone with a signed contract to represent the owner. Applications shall be filed with the secretary of the Board on the forms provided by the Board of Zoning Appeals. The Secretary of the Board will transmit all records of the application to each member of the Board prior to the meeting.
- Sec. 2 All application for matters to be brought before the Board shall be made in accordance with established regulations and procedures. Incomplete applications will not be accepted.
- Sec. 3 The applicant shall provide the secretary with all information requested on the form or forms prescribed by the Board of Zoning Appeals, and any such additional information and data as may be requested by the secretary in order to advise the Board fully with reference to the application. No application will be considered by the Board unless it is made on the form required. All requests shall include a site plan drawn to scale depicting all lot lines, existing and proposed structures and building setback lines.
- Sec. 4 Applications must be filed on or before the fifteenth (15th) day of the month preceding the month in which the request is to be considered. If the fifteenth day of the month falls on a weekend or on a legal holiday observed by the City of Johnson City, then such application shall be filed before 9:00 AM (Eastern Time) on the next regular working day following the fifteenth.
- Sec. 5 Appeals from the final decision of the Board of Zoning Appeals are made to the appropriate court pursuant to Tennessee Law. However, the Board, Planning Commission, or City Commission may initiate a reapplication at any time. A reapplication is an application relating to all or a part of the same property involved in the previous application, for the same purpose and requesting the same relief.

Article V

Deferrals

- Sec. 1 Requests to defer matters to be considered by the Board should be made to the secretary.
- Sec. 2 Deferral requests will be honored unless property owner notifications have been made or the agenda has been distributed to the Board. In such cases, the request will remain on the agenda for Board consideration.

Article VI
Limits of Authorization

- Sec. 1 Variances or special exceptions granted by the Board are based upon conditions and evidence presented at the time of the granting of the variance or special exception. The granting of a variance or special exception does not entitle an owner or developer to extend or construct additional facilities that would require an additional variance or special exception, since the specific circumstances may have changed from the time when the original variance or special exception was granted. In such a case, an additional variance or special exception would be required.
- Sec. 2 Upon the expiration of three (3) years from the authorization hereunder of any variance or special exception for consideration which has not been completed or commenced and an extension of time for completion granted, the authorization shall expire. Variances or special exceptions previously granted by the Board prior to the adoption of this section shall not be subject to this time limitation.

Article VII
Adoption and Amendments

- Sec. 1 These Rules of Procedure may be adopted by a majority vote of the membership of the Board of Zoning Appeals present.
- Sec. 2 These by-laws may be amended by a majority vote of the membership of the Board of Zoning Appeals present.

Adopted February 12, 1991

Effective Date February 12, 1991